

09/13/1999

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DATE 8-16-99

ADMINISTRATIVE ORDER/CONSENT DECREE
CLOSE-OUT FORM

SITE NAME: Reclaim Barrel

SSID #: 08-48

DOCKET NUMBER: CERCLA VIII-97-36

DOCUMENT TYPE: AOC CD UAO X OTHER
IF OTHER, PLEASE DESCRIBE: Deminimis

ACTIVITY: REMOVAL RI/FS RD/RA CASH OUT X OTHER
IF OTHER, PLEASE DESCRIBE: Deminimis Settlement

CERTIFICATION OF COMPLETION DATE: See Admin. Record & Site File

PLEASE ATTACH ALL COPIES OF ALL CLOSE-OUT RELATED DOCUMENTS:

 FINAL OSC REPORT FINAL BILLING DOCUMENTS
 CERTIFICATION LETTER BY PRP OF WORK COMPLETED
 OTHER DOCUMENTS See Admin. Record & Site File

FINAL DEMAND/BILLING DATE: AMOUNT:

RECOVERED FOR:
 OVERSIGHT X PAST COSTS FUTURE COSTS

DATE OF PAYMENT: AMOUNT:

IF THE AMOUNT PAID DIFFERS FROM THE AMOUNT BILLED, PLEASE
EXPLAIN: See attached

Sharon Averboscher
Enforcement Signature
Date: 8/16/99

Danley MacAllen
Finance Signature
Date: 9-13-99

KL
9-13-99

Matt Cohen
Legal Enforcement Program
Date: 8/16/99

Alan L. Pango
RPM/OSC Signature
Date: 8/26/99

OFFICIAL CLOSE-OUT DATE 9/13/99

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:

Reclaim Barrell Company Site
West Jordan, Utah
SSID # Y8

Proceeding under Section 122(g) (4) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as
amended, 42 U.S.C. 9622(g) (4)

U.S. EPA Docket No.
CERCLA -VIII-97-36

**ADMINISTRATIVE ORDER ON
CONSENT**

De Minimis Settlement

BORDEN/MEADOW GOLD DAIRIES

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I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E and to the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice by Regional Delegation No. 14-14-E.

2. This Consent Order is issued to Borden/Meadow Gold Dairies, Inc. ("Respondent"). Respondent agrees to undertake all actions required by this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondent (the "Parties") agree that the actions undertaken by Respondent in accordance with this Consent Order do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Reclaim Barrel Company Superfund Site (the "Site"), pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties, whose liability is limited, from further involvement at the Site; and,

c. to obtain settlement with Respondent for its fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Order" or "Administrative Order on Consent" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.

h. "Parties" shall mean EPA and the Respondent.

i. "Respondent" shall mean Borden/Meadow Gold Dairies, Inc.

j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

k. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

l. "Site" shall mean the Reclaim Barrel Company Superfund Site, encompassing approximately one acre, located at 8487 South Redwood Road in West Jordan, Utah and depicted more clearly on the map attached as Appendix A.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. STATEMENT OF FACTS

6. The Site is located on approximately one acre of land at 8487 South Redwood Road in West Jordan, Utah. The Site is currently an inactive facility that consists of a home occupied by a renter, a process building, and a paint building. Previously, the facility was used to recycle drums. Recycling involved: 1) emptying any remaining hazardous substances in the drums through a caustic rinse process; 2) mechanical "de-rusting" of the drums; 3) application of rust inhibitor; and 4) repainting of the drums.

7. During the above described processes, hazardous substances, including, but not limited to, volatile organics, were released into the soils and groundwater underlying the Site. As a result, hazardous substances including, but not limited to, trichloroethane, benzene, and toluene have been or are threatened to be released at or from the Site.

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. During 1994, EPA commenced a response action to remove drums and structures which were releasing, or threatening to release, to the environment hazardous substances and soils containing such hazardous substances. The first phase of that response action was completed in July, 1994. EPA is currently performing cleanup of groundwater and other soils in furtherance of that response action.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site. EPA has incurred approximately \$1,200,000 to date and expects to incur further response costs. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of the total amount of anticipated response costs.

10. Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site.

11. The amount of hazardous substances contributed to the Site by Respondent does not exceed one percent of the hazardous substances at the Site and the hazardous substances contributed by Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. A "waste-in" list describing the various contributions to the Site is attached, and incorporated by reference, as Appendix B.

V. DETERMINATIONS

12. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The Reclaim Barrel Company site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

13. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

14. Within 30 days of the effective date of this Consent Order, Respondent shall pay to the EPA Hazardous Substance Superfund \$2,314.00

15. Respondent's payment includes: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will exceed the estimated total response costs upon which Respondent's payment is based.

16. Payment shall be made by certified or cashier's check, or by wire transfer, made payable to "EPA Hazardous Substance Superfund." The check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site ID Number 08-Y8, and the EPA docket number for this action, and shall be sent to:

Mellon Bank
EPA Region VIII
Attention: Superfund Accounting
Post Office Box 360859M
Pittsburgh, PA 15251-6859

Wire transfers must be sent to the Federal Reserve Bank in New York to:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

17. At the time of payment, Respondent shall send notice that such payment has been made to:

Legal Enforcement Program, 8ENF-L
U.S. Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202

EPA Cost Recovery Program Manager, 8ENF-T
999 18th Street, Suite 500
Denver, CO, 80202

VIII. FAILURE TO MAKE PAYMENT

18. If Respondent fails to make full payment within the time required by Paragraph 14, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 14, the United States may, in addition to any other available remedies or sanctions, seek to enforce this Consent Order by judicial action, bring an action against Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

19. By signing this Consent Order, Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and,

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

X. COVENANT NOT TO SUE BY UNITED STATES

20. In consideration of the payments that will be made by Respondent under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against Respondent pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for Respondent upon receipt of Respondent's payment as required by Section VII. This covenant not to sue is conditioned upon: a) the satisfactory performance by Respondent of all obligations under this Consent Order; and b) the veracity of the information provided to EPA

by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondent and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

21. The covenant not to sue by the United States set forth in Paragraph 20 does not pertain to any matters other than those expressly specified in Paragraph 20. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or,
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

22. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against Respondent seeking to compel Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that Respondent contributed hazardous substances to the Site in a volume which exceeds the number of hazardous gallons specifically listed for Respondent in Appendix C or hazardous substances of such greater toxic or other hazardous effects that Respondent no longer qualifies as a *de minimis* party at the Site because Respondent contributed greater than one percent of the hazardous substances at the Site, contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site, or engaged in other activity which would constitute ownership or operation under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. COVENANT NOT TO SUE BY RESPONDENT

23. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site; and,

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

24. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Respondent covenants not to sue and agrees not to assert any claims or causes of action against any other Respondent with regard to the Site pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondent reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 20.

28. The Parties agree that Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

XIV. PARTIES BOUND

29. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XV. INTEGRATION/APPENDICES

30. This Consent Order and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is the map of the Site.

"Appendix B" is the De Minimis Waste-In List.

"Appendix C" is the Volumetric Waste-In List.

XVI. PUBLIC COMMENT

31. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(I) of CERCLA, 42 U.S.C. § 9622(I). In accordance with Section 122(I)(3) of CERCLA, 42 U.S.C. § 9622(I)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

32. The Attorney General or her designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

33. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 31 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: Carol Rushin
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance &
Environmental Justice

Date: August 8, 1997

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of U.S. EPA docket number CERCLA-VIII-97-36, relating to the Reclaim Barrel Company Superfund Site, West Jordan, Utah:

FOR RESPONDENT: Borden/Meadow Gold Dairies, Inc.

[Respondent Name]

1104 E. Country Hills Drive

Suite 706

Ogden, Utah 84403

[Address]

By: Ronald P. Moran Aug. 4, 1997
[Name] Ronald P. Moran [Date]
VP, General Counsel & Secretary



BORDEN/MEADOW GOLD
DAIRIES, INC.

RECEIVED
OCT 20 1997
Office of Enforcement,
Compliance & Environmental
Justice



1104 E. Country Hills Drive
Suite 400
Ogden, Utah 84403
(801) 621-0177
(801) 627-4232 (Fax)

October 14, 1997

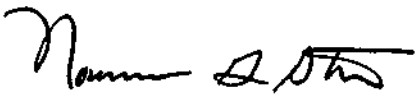
Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Attn: Superfund Accounting

Attached is our payment Re the CERCLA Administrative De Minimis,
Settlement - Reclaim Barrel Site, Salt Lake County, UT.

Borden/Meadow Gold
201 S. Main Suite 1800
Salt Lake City, UT 841112218
Reclaim Barrel Site, SSID #08
CERCLA-VIII-97-36

If you have any questions, I can be reached until October 24 at
801-476-8095 and after October 24th at 801-621-0177. The address
above is correct.



Norman G. Stone

cc: Sharon Abendschan

THE BACK OF THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED IN A SPECIAL WHITE INK.

OFFICIAL CHECK

HOLD THE DOCUMENT AT A SMALL ANGLE TO SEE THIS SECURITY FEATURE.

**First
Security
Bank.**

First Security Bank of Utah, N.A.
Salt Lake City, Utah

603308164

10-88/220

Office No. 202/Ep Date Oct 14 97

Pay to the Order of EPA HAZARDOUS SUBSTANCE SUPERFUND

2314.00

RECLAIM BARRA SITE, SS10 #08 THE SON 23 I 4

CERCLA-VIII 97-36

BORDEN / MEADOW GOLD ~~BARRETS~~

For

201 S MAIN SUITE 1800

ISSUED BY INTEGRATED PAYMENT SYSTEMS INC. Englewood, CO. Check

TO CITIBANK NEW YORK STATE SUPERFUND CITY, UT 84111 2218

Authorized Signature by

First Security Bank of Utah, N.A.

⑆022000868⑆68⑈460139 603308164

THE VARIABLE TONE BACKGROUND AREA OF THIS DOCUMENT CHANGES COLOR GRADUALLY AND SMOOTHLY FROM DARKER TONES AT BOTH TOP AND BOTTOM TO THE LIGHTEST TONE IN THE MIDDLE.

DO NOT WRITE / SIGN / STAMP BELOW THIS LINE
DEPOSITORY DATA ENRISEMENT

FOR INFORMATION CONCERNING THIS INSTRUMENT

CONTACT

INTEGRATED PAYMENT SYSTEMS INC.

1-800-223-7528

10-21-97 0950859 0859172 21 002 20



OFFICIAL CHECK

681203164

Pay to the Order of EPA HAZARDOUS SUBSTANCE SUPERFUND

\$2314.00

Reclaim 6822 s.m. 5540 THE SUM 2314.00 DOLLARS

CERCLA-VII 47-36
BORDEN / MEADOW GOLD SITES

For 1815 MAIN ST. S. 1800
SALT LAKE CITY, UT 84143

First Security Bank of Utah, N.A.

⑆022000868⑆68⑆460139 603308164 ⑆0000231400⑆